IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

CRL.A.No. 704 of 2002()

ST.28/2001 of JUDL. MAGISTRATE OF FIRST CLASS-II, PERAMBRA DT. 22.10.2001.

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APPELLANT: COMPLAINANT

CHANGAROTH GRAMA PANCHAYATH REP.BY ITS SECRETARY, KOZHIKODE

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED
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1. **POILANKY HAMEED, S/O. KUNHIAMMAD, CHERIYAKUMBALAM, P.O. PALERI.**

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.S.DILIP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 704 OF 2002

DATED THIS THE 27TH June 2007

JUDGMENT

The appellant is the Panchayat who had initiated proceedings under Section 210 of the Kerala Panchayat Raj Act on the allegation that a sum of Rs. 1,37,918/- is due from the accused towards the amounts to be paid with respect to the auction for removal of sand for the period 1996-97 he being the highest bidder. The findings of the court below that the compliance of the 2nd proviso to Section 210 has not been complied is challenged herein .

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P10. It is the version of PW2, the clerk of the Panchayat who executed Ext.P9 distraint warrant that he had gone to the house of the accused and that there was no movable articles sufficient enough to satisfy the amount due and hence the execution was found to be impracticable. The court has also found that the distraint warrant was issued on 29-3-1997 and the period of limitation

would expire after 31-3-1997 and hence it appeared that the Panchayat got the distraint warrant prepared, put a prior date and got the endorsement just before the expiry of the period of limitation. Only with respect to the above non-compliance of the 2nd proviso to Section 210, the court acquitted the accused. It is pointed out by counsel for the revision petitioner that there is no reason as to why the evidence of PW2 could not be relied on, Pw2, being the official of the Panchayat and what has been performed by him is only the official duties. Further more the court has found in favour of the Panchayat with respect to the amounts due and as to the genuineness of the agreements executed. Being an official act, it is submitted that the court should have found that the official function has been performed lawfully and the presumption in this regard ought to have been drawn.

On a consideration of the evidence adduced in the matter, I find that the matter requires reconsideration. The order of the court below is set aside and the case is remitted back to the court below. The court below shall permit the parties to adduce

further evidence, if they so desire and dispose of the matter on merits. The parties shall appear before the court below on 30-7-2007. The Crl.appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 704 OF 2002

JUDGMENT

27-06-2007